Supreme Court, U.S.
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No. 92-373

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

TIM ROCHE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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No. 92-373

IN THE SUPREME COURT OF THE UNITED STATES

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TIM ROCHE,

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v.

STATE OF FLORIDA,

Respondent.

In its Opposition to Petitioner Tim Roche's Petition for a Writ of Certiorari, Respondent, the State of Florida, has elected to abandon its policy arguments, mischaracterize the record below and all but ignore the significant constitutional principles threatened by its relentless prosecution of Mr. Roche.

A brief reply is therefore warranted.

The State's assertions to the contrary, the opinion of the appellate court at issue here, like the trial court order it affirmed, holds that Mr. Roche was properly convicted of indirect criminal contempt because his publication of portions of the Termination Order "was not qualifiedly privileged" and his publication "contravened" the "purposes served by maintaining the confidentiality of juvenile dependency and termination of parental rights proceedings." See In re Investigation: Florida Statute 27.04, Subpoena of Roche, 589 So. 2d 978, 981 (Fla. Dist. Ct. App.

1991), reprinted in Petition for Writ of Certiorari, Roche v. Florida, No. 92-373 ("Petition"), at 3a, 9a.

In short, as Mr. Roche has argued, Florida's Fourth District Court of Appeal did not address the issue of whether he held a constitutionally based qualified privilege to refuse to disclose the identity of a confidential source, but, instead, affirmed his conviction for contempt on grounds that he had no "privilege" to publish what he had learned. That holding, born of confusion and nurtured by the State's inattention to fact and reliance on inapposite case law, constitutes plain error.[1]

As Respondent's Opposition reveals, however, even if the Fourth District actually had affirmed Mr. Roche's conviction and jail sentence on grounds that he had refused to identify his source, review and reversal of that holding would be appropriate. For, at this last juncture, the State has abandoned any pretense of

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[1] Having denied making any such argument to any Florida court, the State, in its Opposition, admits that "a portion of Respondent's argument in the trial court was that publication of a confidential court order was improper. . . ." See Opposition at 6 (emphasis supplied by Respondent). Having instigated the confusion that led to the trial court's unconstitutional ruling and the appellate court's equally unconstitutional affirmance, see The Florida Star v. B.J.F., 491 U.S. 524, 541 (1989), Cox Broadcasting Co. v. Cohn, 420 U.S. 469, 491 (1975), see generally Branzburg v. Hayes, 408 U.S. 665, 681 (1972)(noting that the cases presented there did not involve the imposition of "civil or criminal" penalties "related to the content of published materials"), the State should not now be permitted to argue that Petitioner's Question Presented was not argued in the courts below. See Opposition at 7. Moreover, the jurisdiction of this Court may be invoked where, as here, the ruling of a lower court violates the Constitution, whether or not that ruling is based on arguments that were "raised" by the parties below. See Cohen v. Cowles Media Co., 111 S. Ct. 2513, 2517 (1991); see generally Norris v. Alabama, 294 U.S. 587, 590 (1935).

having a "compelling need" for the identity of Mr. Roche's confidential source, and has conceded that it seeks the identity of the source solely so that it can "rectify those procedures which unlawfully permitted disclosure of the confidential order to Petitioner." See Opposition at 12.[2] From Respondent's perspective, then, what appears to be at issue here is whether, consistent with the United States Constitution, the State of Florida may jail a news reporter for refusing to cooperate in its effort to track down an errant government employee and, presumably, secure his or her dismissal. No other remedial measures remain available to it.

This is not a case where the government seeks a news reporter's testimony for purposes of "[f]air and effective law enforcement aimed at providing security for the person and property

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[2] The State again asserts that it seeks the identity of Mr. Roche's source "in order to prosecute those persons . . . [who] unlawfully permitted disclosure of the confidential order . . . ." Id. However, as the State is aware, the statute of limitations for any purported crime committed by Mr. Roche's source (and no crime at all may have been committed) expired in May 1991 -- nearly two years ago. See Florida Statutes § 775.15(2) (Supp. 1992). Additionally, the State, for the first time, raises the suggestion that forcing disclosure of the identity of Mr. Roche's source will serve a purpose because "[w]hile it is true that one whose confidential records have been published does not have a cause of action against a newspaper who prints them, that person does have a cause of action against the person who discloses them. Cape Publications, Inc. v. Hitchner, 549 So. 2d 1374 (Fla. 1989)." Opposition at 13 (emphasis supplied by Respondent). Even if Cape Publications could be read to stand for this proposition -- and Petitioner asserts that it cannot -- the State has no authority to invoke its prosecutorial power to create a purely private cause of action for some unidentified person who might pursue a civil remedy of an unidentified variety.

of the individual," Branzburg v. Hayes, 408 U.S. 665, 690 (1972),[3] but a case where a government seeks a news reporter's testimony for purposes of discouraging future reports about its own mistakes -- including those illustrating the lack of care with which state employees sometimes handle supposedly confidential records. As such, the holding below is antithetical to core values protected by the First and Fourteenth Amendments and should be reversed.[4]

> THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION PROHIBIT THE STATE OF FLORIDA FROM JAILING A NEWSPAPER REPORTER FOR HIS REFUSAL TO IDENTIFY A CONFIDENTIAL SOURCE WHERE THE STATE HAS FAILED TO DEMONSTRATE THAT A COMPELLING INTEREST WOULD BE SERVED BY COERCING FROM THE REPORTER HIS SOURCE'S IDENTITY

If, as Respondent's Opposition suggests, the question presented here is whether a news reporter must forfeit the

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[3] In routine forms filed with the Attorney General's office, the Assistant State Attorney in charge of this prosecution consistently has reported that the case involves no victim.

[4] As the General Assembly of Virginia recognized just seven years after the First Amendment was enacted:

> Let it be recollected . . . that the right of electing the members of the government constitutes more particularly the essence of a free and responsible government. The value and efficacy of this right depends on the knowledge of the comparative merits and demerits of the candidates for public trust, and on the equal freedom, consequently, of examining and discussing these merits and demerits of the candidates respectively.

4 Elliot's Debates on the Federal Constitution (1876), p. 575. Neither rigorous examination nor informed discussion can take place in an atmosphere where, as here, the acquisition and publication of information about the workings of government are permitted to form the predicate for the imposition of a penal sanction upon a news reporter.

protections guaranteed to newsgatherers by the First and Fourteenth Amendments simply because the truthful information he published came to him from a confidential source, then review of the decision below by this Court remains appropriate and reversal of that decision warranted.

A. A Central Purpose of the First Amendment is to Encourage Truthful News Reports About the Workings of Government, and This Purpose Cannot Be Fulfilled Where Such Reports Can Be Used by the Government as The Basis for Jailing News Reporters

From the earliest days of this Republic, Americans have depended on news reporters to bring them timely and complete information about the workings of their government. "Self-government can exist only insofar as the voters acquire the intelligence, integrity, sensitivity, and generous devotion to the general welfare that, in theory, casting a ballot is assumed to express." A. Meikeljohn, The First Amendment Is An Absolute, 1961 Sup. Ct. Rev. 245, 255 (1961). The most effective way of ensuring thoughtful self-government, the Founders recognized, was "freedom of the press." See The Life and Selected Writings of Thomas Jefferson 576 (Letter to Judge John Tyler, June 28, 1804)(Modern Library ed. 1944). Leaving the press free to examine the institutions of democracy, Jefferson reasoned, was essential to its preservation, and to the prevention of a government's ability to "manacl[e] the people with their own consent." Ibid. And, as this Court has recognized, whatever other objectives the authors of the First Amendment had in mind, its safeguards were "fashioned to assure unfettered interchange of ideas for the bringing about of

political and social changes desired by the people." Roth v. United States, 354 U.S. 476, 484 (1957). Indeed, because a central purpose of the First Amendment is to "protect the free discussion of governmental affairs[,]" Mills v. Alabama, 384 U.S. 214, 218 (1966), the "Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people." New York Times Co. v. United States, 403 U.S. 713, 717 (1971)(Black, J., concurring).

That protection has been held to include protection from coerced disclosure of news sources, as well as protection from governmental censorship accomplished through criminal sanction.

Indeed, American courts traditionally have declined governmental invitations to punish members of the press for bringing information about governmental operations or failures to the attention of the community. See, e.g., New York Times, 403 U.S. at 714 (declining to prohibit publication of the Pentagon Papers); New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964)(declining, absent demonstration of actual malice, to impose civil penalties on newspaper for publication critical of public officials); see generally Sweeney v. Patterson, 128 F.2d 457, 458 (D.C. Cir.), cert. denied, 317 U.S. 678 (1942)("[c]ases which impose liability for erroneous reports of the political conduct of officials reflect the obsolete doctrine that the governed must not criticize their governors").

In seeking to enforce the criminal penalty entered against Mr.

Roche, the State implicitly ignores the purposes served by this basic constitutional principle, and explicitly ignores the wisdom and experience of the American judiciary -- in Florida and elsewhere -- gained over the course of the past two decades. For, in recognition of the fact that much useful information comes to the press (and thus to the public) from confidential sources, and in response to the fact that American reporters are now the targets of thousands of subpoenas each year,[5] the majority of federal and state jurisdictions have held that fundamental constitutional interests are seriously threatened where, as here, a government fails to demonstrate that it has a compelling need for the identity of a news reporter's confidential source, but seeks to punish a reporter for refusing to identify his source nevertheless. As the United States Court of Appeals for the District of Columbia Circuit noted more than a decade ago:

> Compelling a reporter to disclose the identity

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[5] As this Court noted in Branzburg, "[f]rom the beginning of our country the press has operated without constitutional protection for press informants, and the press has flourished." 406 U.S. at 698-99. At the time Branzburg was decided, however, there was little empirical evidence to suggest that "federal and state authorities" would "'annex' the news media as 'an investigative arm of the government.'" Id. at 709 (Powell, J., concurring). See, e.g., Note, The Newsman's Privilege: Investigations, Criminal Prosecutions and Private Litigation, 58 Cal. L. Rev. 1198, 1200 (1980)(study showing that, between 1911 and 1968, the issue of a qualified privilege for journalists was raised only 17 times); N.Y.L. Rev. Comm., Report, Recommendations, and Studies, 1949, 25, 57-97 (study showing that, from 1886-1949, only 14 state court cases involved subpoenas issued to journalists). The same is not true today. See, e.g., W.A. Henry, When the Bench Uses a Club, TIME Magazine, Aug. 26, 1991, at 56 (reporting results of a study conducted in 1990, which showed that, in that year alone, American journalists were the targets of more than 4,500 subpoenas).

> of a confidential source raises obvious First Amendment problems. . . . Without an unfettered press, citizens would be far less able to make informed political, social and economic choices. But the press' function as a vital source of information is weakened whenever the ability of journalists to gather news is impaired. Compelling a reporter to disclose the identity of a source may significantly interfere with this news gathering ability; journalists frequently depend on informants to gather news, and confidentiality is often essential to establishing a relationship with an informant.

Zerilli v. Smith, 656 F.2d 705, 710-11 (D.C. Cir. 1981)(citations omitted).

B. The Overwhelming Majority of State and Federal Jurisdictions Recognize a Qualified Privilege Permitting Journalists to Shield the Identity of Their Confidential Sources From the Government Absent Evidence of a Compelling Governmental Interest in the Source Identity.

As this Court, eleven federal circuit courts of appeal,[6] 29

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[6] The First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, Eleventh and District of Columbia Circuits have recognized a qualified testimonial privilege for news reporters in a series of cases this Court has consistently refused to review. See, e.g., In re Grand Jury Proceedings, 766 F. Supp. 358 (W.D. Pa. 1991), aff'd, 963 F.2d 567 (3d Cir. 1992)(en banc); Desai v. Hersh, 954 F.2d 1408 (7th Cir.), cert. denied, 61 U.S.L.W. 3260 (U.S. Oct. 6, 1992); United States v. LaRouche Campaign, 841 F.2d 1176 (1st Cir. 1988); United States v. Caporale, 806 F.2d 1487 (11th Cir. 1986), cert. denied sub nom. Gopman v. United States, 482 U.S. 917 (1987); LaRouche v. National Broadcasting Co., 780 F.2d 1134 (4th Cir.), cert. denied, 479 U.S. 818 (1986); United States v. Burke, 700 F.2d 70 (2d Cir.), cert. denied, 464 U.S. 816 (1983); Zerilli v. Smith, 656 F.2d 705 (D.C. Cir. 1981); Miller v. Transamerica Press, Inc., 621 F.2d 721 (5th Cir. 1980), cert. denied, 450 U.S. 1041 (1981); Silkwood v. Kerr-McGee Corp., 563 F.2d 433 (10th Cir. 1977); Farr v. Pitchess, 522 F.2d 464 (9th Cir. 1975), cert. denied, 427 U.S. 912 (1976); Cervantes v. Time, Inc., 464 F.2d 986 (8th Cir. 1972), cert. denied, 409 U.S. 1125 (1973). The Sixth Circuit rejected an absolute privilege in In re Grand Jury Proceedings, 810 F.2d 580 (6th Cir. 1987), a case in which a television reporter possessed the sole evidence identifying the murderer of a Detroit police officer. As Judge Guy noted in his

state legislatures,[7] and the courts in 42 states[8] have recognized, "without some protection for seeking out the news, freedom of the press could be eviscerated." Branzburg v. Hayes, 408 U.S. 665, 681 (1972).[9] Mr. Roche asserts that, if allowed to stand, the

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concurring opinion: "even if one applies the precise balancing test the dissent in Branzburg advocated, the result of that balancing commands disclosure. . . ." Id. at 588.

[7] The legislatures in the following states (listed alphabetically, and followed by the date of enactment) have enacted statutory shield laws granting news reporters some protection from compulsory process: Alabama (1935), Alaska (1967), Arizona (1937), Arkansas (1936), Colorado (1990), Delaware (1953), Georgia (1990), Illinois (1982), Indiana (1941), Kentucky (1952), Louisiana (1964), Maryland (1896), Michigan (1949), Minnesota (1973), Montana (1991), Nebraska (1973), Nevada (1971), New Jersey (1960), New Mexico (1973), New York (1970), North Dakota (1973), Ohio (1953), Oklahoma (1974), Oregon (1973), Pennsylvania (1937), Rhode Island (1971) and Tennessee (1973). The people of California have made their state's shield law a provision of the state constitution, and, late last year, the District of Columbia Council enacted a shield law for journalists working in the nation's capital.

[8] The reach of statutory shield laws has been tested in nearly every state where such a law has been enacted. Additionally, courts in thirteen states where no statutory shield law has been passed have recognized such a privilege as a matter of constitutional and common law. These are: Connecticut, Florida, Idaho, Iowa, Kansas, Maine, Massachusetts, New Hampshire, Vermont, Virginia, Washington, West Virginia and Wisconsin.

[9] The federal government also has recognized the importance of protecting news reporters from coerced disclosure of their news sources. In 1970, the United States Department of Justice promulgated guidelines, under which "reporters and photographers will not be subpoenaed unless the information is crucial and cannot reasonably be obtained elsewhere." See Mitchell Sets Rules Limiting Subpoenas Issued to Newsmen, N.Y. Times, Aug. 11, 1970, at A1. The guidelines focus on the balancing test that has been recognized throughout the federal and state judiciary. See Order No. 544-73, 38 Fed. Reg. 29588 (Oct. 26, 1973); T.B. Adamson, Shame on the Senate for subpoenaing reporters, Editor & Publisher, Apr. 4, 1992, at 64, 49. Binding on every federal government attorney, and applicable in both civil and criminal cases, the Justice Department guidelines have remained in effect, without substantial modification, for more than two decades. See 28 C.F.R. § 50.10.

decision below could accomplish this constitutionally pernicious end.

At issue here, according to the State, is a thirty-day jail sentence imposed on a newspaper reporter for his refusal to identify a confidential source, whose identity the State seeks solely so that it can "rectify those procedures which unlawfully permitted disclosure of the confidential order to Petitioner." Opposition at 12. Thus, taken literally, the State has imposed a criminal penalty on Mr. Roche for exposing the shoddiness of its record-keeping procedures to the community and for refusing to sacrifice a news source to a government unwilling or unable to correct its own systemic deficiencies.[10] Whatever interest the State may have in disciplining those in its employ, it is insufficient to overcome the basic constitutional interest -- shared by news reporters and the public they serve -- in receiving information about governmental activities. The State's interest here simply is not compelling: indeed, internal discipline can be effected by measures far less Draconian than the jailing of citizens not employed by the government.

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[10] In the entirely disingenuous arguments it presented to the trial and appellate courts, the State refused to concede that the real purpose of this prosecution was to secure the name of a person it believes to be a recalcitrant state employee, or, failing that, to punish Mr. Roche in that person's stead. As the record of this case makes clear, however, this is exactly what the State did, for the punishment imposed on Mr. Roche is the "punishment" mandated by Florida law for disclosures by state employees of the contents of judicial orders terminating parental rights. Thus, Mr. Roche is being punished for a crime he is legally incapable of committing, and is, in fact, being punished, in violation of the Constitution, for publishing information he lawfully obtained.

As this Court has held, where, as here, a "significant encroachment upon personal liberty" is threatened, "the State may prevail only upon showing a subordinating interest which is compelling." Bates v. Little Rock, 361 U.S. 516, 524 (1960)(citations omitted). The State should not be permitted to prevail here.

The record of this case speaks for itself. Had the State genuinely had a "compelling" need to "rectify" procedures, it has had ample opportunity to do so. Instead, the State has concentrated its efforts for the past 31 months not on rectifying its own procedures, but rather on the now entirely pointless prosecution of Mr. Roche. Indeed, there is no evidence anywhere in the record of this case -- and the State does not cite any -- that it has taken any steps whatsoever to punish or correct any of the behavior of its employees which it learned of during the haphazard investigation into the disclosure at issue here. Rather, the evidence is just the opposite: having learned of numerous real violations of the statute in which it purports to have a compelling interest, the State elected to ignore them and to focus its prosecutorial powers on punishing Mr. Roche.[11] The history of this litigation, in fact, is a history of a government's attempt to coerce silence about its operations, "the argument of force in its worst form." Whitney v. California, 274 U.S. 357, 376 (1927) (Brandeis, J., concurring). See Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539, 558 (1962), quoting Sweezy

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[11] See Petition at 61a - 100a.

v. New Hampshire, 354 U.S. 234, 245 (1957)("'It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge on such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas * * * '"). Where, as here, "the power of compulsory process" has been neither carefully circumscribed, nor even fairly applied, review and reversal of any resulting contempt conviction is appropriate.

C. The State's Attempt to Portray This Prosecution As a Clash Between the Rights of Children and the Rights of News Reporters Ignores the Fact that, in this Particular Case, Those Rights Were Intertwined.

Until its Opposition, the State, throughout this prosecution, has characterized the interest to be served by forcing Mr. Roche to reveal the identity of his source as the protection of the privacy rights of Florida's children, and has implied that Mr. Roche's refusal to identify his source has somehow imperiled those rights. In its Response, the State plays lipservice to this argument, stating, correctly, that "the rights of children have always been of primary concern to the courts of this country" and noting that "'[a] democratic society rests for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens.'" See Opposition at 13, quoting New York v. Ferber, 458 U.S. 747, 757 (1982) (citations omitted and emphasis supplied by Respondent). The State does not explain now, however, nor has it ever cogently explained, how forcing Mr. Roche to reveal the

identity of his source -- or jailing him for refusing to do so -- will aid Florida in fostering "the healthy, well-rounded growth of young people" in general, or Charlotte May Puffinberger in particular. Compare Branzburg, 408 U.S. at 710 (Powell, J., concurring)("the asserted claim to privilege should be judged on its facts by the striking of a proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with regard to criminal conduct")(emphasis added).

This critical omission results from necessity. For there is no evidence anywhere in the record of this case to suggest that Mr. Roche's decision to withhold his source's identity has in any way endangered the privacy rights of Florida's children. By contrast, the record of this case demonstrates clearly that news reports such as Mr. Roche's -- which often can result only from the use of confidential sources -- can serve an interest critical to the "healthy, well-rounded growth" of children: that is, the interest they have in not being beaten to death while under the inattentive care of government agencies.

More importantly, the record of this case demonstrates beyond argument that, in this particular case, and with regard to the particular child at issue here, Mr. Roche's news reports accomplished exactly that purpose. See Affidavit of Jane Doe, Charlotte May Puffinberger's Former Foster Mother, reprinted in Petition at 26a - 29a.

For centuries, the rubric of "family privacy" has been used to shield from the spotlight of community attention the failures of

both society and government to protect some families' most fragile members from torture and death. Often, it has not been until news reporters have expended time and energy examining what really is going on in particular households or particular government institutions -- as opposed to what officials say is going on -- that changes are made or lives saved. See, e.g., Opposition at A-79 - 80. More often, reports come too late and necessary changes come only after the supervision of a case is transferred from a welfare agency to a prosecutor, or a victim of child abuse from the supervision of a protective services agency to the supervision of the county morgue.

As the record of this case demonstrates, important changes in the operations of Florida's Department of Health and Rehabilitative Services -- changes that perhaps could have saved the life of Crystal McGrath, Charlotte May Puffinberger's older sister, had they been instituted earlier -- were not made until Mr. Roche reported on the systemic failures that had contributed to Crystal's violent killing. See, e.g., Appellant's Initial Brief, In re: Investigation: Florida Statute, 27.04 Subpoena of Tim Roche (Fla. Dist. Ct. App. Feb. 11, 1991), at viii (T. Roche, Death blamed on HRS, The Stuart News, Apr. 18, 1989, at A1), xi (T. Roche, Probe: HRS criticized in girl's death, The Stuart News, Apr. 25, 1989, at A1). As the record of this case also demonstrates, it is the belief of Charlotte May Puffinberger's former foster mother that, far from harming Charlotte May in any way, Mr. Roche's news stories actually may have saved her life. See Petition at 26a - 29a.

Thus, underscoring the State's Response and its relentless prosecution of Mr. Roche is its abject refusal to acknowledge that significant public interests are not always served by myopic adherence to government's interest in secrecy.[12] It was, after all, not Charlotte May Puffinberger, nor anyone with standing to represent her, who instigated this prosecution. Rather, it was the judge presiding over the termination hearing who contacted the prosecutor's office and demanded that Mr. Roche be subpoenaed -- and he did so only after receiving a complaint from the losing lawyer. See Petition at 55a - 58a. Compare Craig v. Harney, 331 U.S. 367, 376 (1947)("the law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion").

The contempt order against Mr. Roche may have been entered, as the State claims, "after consideration of the principles enunciated by this Court in Branzburg v. Hayes," see Opposition at 14-15, but, as the record of this case makes clear, those principles were misunderstood by the State and misapplied by the courts below.

As a consensus of American courts have recognized in the two decades since this Court announced its decision in Branzburg, where, as here, publication of information provided by a confidential source serves an important public benefit, the

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[12] This would seem to be particularly true where, as here, the news story at issue quoted from (but certainly did not criticize) a judge's order, and where the quoted portions of the order in question contained no information which had not already been made public by prosecutors and other state officials involved in the case. See Petition at 6, 30a - 54a.

interest asserted by the government to overcome a news reporter's privilege against forced disclosure of a source's identity must be weighty, indeed. And, as American courts consistently have held, neither the dignity of the bench, nor a government's interest in disciplining wayward employees constitutes such a "compelling" interest. See, e.g., Craig, 331 U.S. at 378 (reversing contempt convictions of newspaper publisher, editorial writer and reporter for publications criticizing trial procedures); Pennekamp v. Florida, 328 U.S. 331, 349-50 (1946)(reversing contempt convictions entered against newspaper and its publisher for publications criticizing actions of court); In re Grand Jury Proceedings, 766 F. Supp. 358 (W.D. Pa. 1991), aff'd, 963 F.2d 567 (3d Cir. 1992)(en banc)(affirming quashal of federal grand jury subpoenas issued to news reporters aimed at discovering source of leak of government documents). See generally New York Times, 376 U.S. at 272-73 (citations omitted)("Where judicial officers are involved, this Court has held that concern for the dignity and reputation of the courts does not justify the punishment as criminal contempt of criticism of the judge of his decision").

In Florida, as in every other jurisdiction in America, the history of contempt is a history of reversal. See, e.g., Gibson, 372 U.S. at 558; Pennekamp, 328 U.S. at 349-50; Tribune Co. v. Huffstetler, 489 So. 2d 722 (Fla. 1986); Morgan v. State, 337 So. 2d 951 (Fla. 1976). No American news reporter in this century has been forced to serve a jail sentence for revealing to his community the deficiencies of its government -- or, indeed, for refusing to

identify the source of any information about those errors.

No reason exists why Mr. Roche should be the first.

CONCLUSION

As Mr. Justice Harlan observed three decades ago:

> The full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This 'liberty' is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bears arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints, . . . and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgement.

Poe v. Ullman, 367 U.S. 497, 543 (1961)(Harlan, J., dissenting from dismissal on jurisdictional grounds)(citations omitted).

Careful scrutiny of the decision below, as well as of the arguments made by the State in support of that decision, require its reversal.

For all of these reasons, Petitioner Tim Roche respectfully respects that this Court grant his Petition for a Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Federal Express to **ROBERT A. BUTTERWORTH, JR., ESQ., Attorney General of Florida, The Capitol, Tallahassee, Florida 32399-0001** and **SARAH B. MAYER, ESQ., Attorney General's Office, 111 Georgia Avenue, Suite 204, West Palm Beach, Florida 33401** this 4th day of January, 1993.

Attorney